Assembly Manufacturing Corporation *and* International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC. Cases 15-CA-7839 and 15-RC-6607[1]

June 30, 1982

DECISION AND ORDER

BY MEMBERS FANNING, JENKINS, AND ZIMMERMAN

Upon a charge filed on August 29, 1980, by International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, herein called the Union, and duly served on Assembly Manufacturing Corporation, herein called Respondent, the General Counsel of the National Labor Relations Board, by the Acting Regional Director for Region 15, issued a complaint on September 10, 1980, against Respondent, alleging that Respondent had engaged in and was engaging in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the National Labor Relations Act, as amended. Copies of the charge and complaint and notice of hearing before an administrative law judge were duly served on the parties to this proceeding.

With respect to the unfair labor practices, the complaint alleges in substance that on July 14, 1980, following a Board election in Case 15-RC-6607, the Union was duly certified as the exclusive collective-bargaining representative of Respondent's employees in the unit found appropriate; and that, commencing on or about July 18, 1980, and at all times thereafter, Respondent has refused, and continues to date to refuse, to bargain collectively with the Union as the exclusive bargaining representative, although the Union has requested and is requesting it to do so. On September 25, 1980, Respondent filed its answer to the complaint admitting in part, and denying in part, the allegations in the complaint.

On October 1, 1980, counsel for the General Counsel filed directly with the Board a Motion for Summary Judgment. Subsequently, on October 14, 1980, the Board issued an order transferring the proceeding to the Board and a Notice To Show Cause why the General Counsel's Motion for Summary Judgment should not be granted. Respondent thereafter filed a response to the Notice To Show Cause.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Upon the entire record in this proceeding, the Board makes the following:

Ruling on the Motion for Summary Judgment

In its answer to the complaint and response to the Notice To Show Cause, Respondent asserted in effect that the Union's certification was invalid, and that the complaint herein should be dismissed in its entirety, or in the alternative a hearing should be held to litigate the issues raised, on grounds that the evidence presented in support of its objections in the underlying representation case was sufficient to warrant setting aside the representation election or at least raise substantial material factual issues requiring a hearing, and that the Regional Director's refusal to order such a hearing was an abuse of discretion;[2] that the use of summary judgment procedures in this case would not afford Respondent due process of law, and that no decision should be entered without Respondent being allowed a hearing on its objections to the election in the underlying representation case. Respondent's answer admits that it refused to recognize and bargain collectively with the Union as the exclusive bargaining representative of all the employees in the unit described in the complaint as an appropriate unit, because Respondent desired to test the correctness of the Acting Regional Director's Supplemental Decision and Certification of Representative before the Board and appropriate United States court of appeals. The General Counsel contends, *inter alia*, that the issues raised by Respondent's answer concern the appropriateness of the unit[3] which Respondent is precluded from relitigating in this case since these issues were, or could have been, raised in the representation proceeding. We agree with this contention.

An election was conducted on April 23, 1980, after which the tally of ballots furnished the parties showed that, of approximately 162 eligible voters, 32 cast votes for the Union, 14 cast votes against the Union, and 100 cast challenged ballots. Respondent timely filed objections to the election. On July 14, 1980, the Acting Regional Director, following an investigation, issued a Supplemental Decision and Certification of Representative, in which

[1] As discussed *infra*, the Board *sua sponte* decided to reopen the proceeding in Case 15-RC-6607. Accordingly, in order to effectuate the purposes of the Act and to avoid unnecessary costs or delay, Cases 15-CA-7839 and 15-RC-6607 were consolidated. See fns. 4 and 5, *infra*.

[2] In support of its position concerning its objections to the election in the representation case, Respondent cited, *inter alia*, the United States Court of Appeals decision in *N.L.R.B.* v. *Claxton Manufacturing Co., Inc.*, 613 F.2d 1364 (5th Cir. 1980), denying enforcement and remanding 237 NLRB 1393 (1978), and *Newport News Shipbuilding and Drydock Company*, 239 NLRB 82 (1978).

[3] Decided by the Acting Regional Director in his Decision and Direction of Election of March 26, 1980, *after hearing*; request for review denied by the Board on April 22, 1980.

he sustained the challenges to 97 ballots cast by laid-off employees, making it unnecessary to consider the remaining 3 challenges, overruled the objections, and certified the Union. Respondent filed a timely request for review, which was denied by the Board by telegraphic order dated September 17, 1980. On September 10, 1980, the Acting Regional Director had issued a complaint in the instant proceeding, alleging Respondent's refusal to bargain. On September 29, 1980, Respondent filed with the Board a motion requesting the Board to reconsider its earlier denial of review. On October 1, 1980, the General Counsel filed with the Board his Motion for Summary Judgment. On October 14, 1980, the Board issued its Notice To Show Cause in the instant proceeding, and on October 16, 1980, the Board denied Respondent's motion for reconsideration on the ground that it did not raise any matter not previously considered.

Upon reexamination of all the circumstances, however, we concluded that there was merit in Respondent's contentions that a hearing was required on its objections. Thus, on May 13, 1981, the Board issued a Decision and Order in this consolidated proceeding,[4] wherein we stated the following:

> In overruling those objections on the basis of his administrative investigation, the Acting Regional Director found "significant" his relation of the statements in certain affidavits. Thus he apparently relied at least in part on his own credibility determinations, since his findings appear contrary to certain factual assertions contained in affidavits submitted by Respondent. While such reliance is permissible for a trier of fact, whose responsibility it is to resolve conflicting testimony and to weigh the evidence, it is not appropriate in the context of determining whether substantial and material factual issues are raised by the objections.[4a] Thus, in denying a hearing on an issue, the truth of the factual assertions made by the objecting party in relation to evidence concerning specific events and individuals must be assumed.[4a] Further, in treating the *Milchem*[5] objection alleging electioneering by petitioner within a few feet of the voting area while the polls were open, together with the objections relating to the integrity of the ballot box and the voting areas,[6] it appears that he inadvertently omitted making specific findings regarding the former objection.

[4] See *Newport News Shipbuilding and Drydock Co.*, 239 NLRB 82, at p. 84 and fn. 12 (1978).

[4] Not reported in volumes of Board Decisions. See fn. 1, *supra*.

[4a] *Ibid*, p. 84.

[5] *Milchem Inc.*, 170 NLRB 362 (1968).

[6] The Acting Regional Director consolidated the above objections for the purpose of reporting thereon.

Accordingly, the Board deferred ruling on the General Counsel's Motion for Summary Judgment in Case 15-CA-7839 pending our remand to the Regional Director of Respondent's Objections 1, 2, 3, and 5 in Case 15-RC-6607 for a hearing before a duly designated hearing officer, for the purpose of receiving evidence concerning said objections[5] and issuing a report containing resolutions of the credibility of witnesses, findings of fact, and recommendations to the Board concerning the disposition of said objections. We concluded that we would thereafter consider the Hearing Officer's report, and any exceptions thereto, together with the General Counsel's Motion for Summary Judgment, and render a final decision in this consolidated proceeding.

A hearing on objections was subsequently held before Hearing Officer Larry Smith, who thereafter issued a report, recommending that the Employer's Objections 1, 2, 3, and 5 be overruled in their entirety. The Employer-Respondent has timely filed exceptions with the Board to the Hearing Officer's report, together with a memorandum in support of its exceptions, and Petitioner filed a reply brief.

The Board has reviewed the record in light of the exceptions and briefs, and has decided to adopt the Hearing Officer's findings and recommendations.[6] Accordingly, the Certification of Representative previously issued in Case 15-RC-6607 is hereby affirmed.

All issues raised by Respondent in this proceeding in Case 15-CA-7839 have or could have been litigated in the representation proceeding in Case 15-RC-6607, and Respondent does not aver any newly discovered or previously unavailable evidence, or allege that any special circumstances exist herein which would otherwise require the

[5] Since the Union herein had been certified and Respondent's contentions with respect to its objections, while raising matters sufficient to require a hearing, did not demonstrate evidence sufficient on its face to require overturning the election, we decided not to revoke the certification, but instead to consider the evidence in light of Respondent's motion for reconsideration in Case 15-RC-6607.

With respect to Respondent's Objection 2, alleging electioneering activities by a representative of the Union during the voting period, we emphasized that "the objecting party bears a burden of showing more than 'mere presence' for a brief period of time in an area where electioneering would be prohibited. Thus, to sustain such an objeciton, there must be some evidence of actual electioneering, or of presence in a prohibited area for a period sufficient to infer that electioneering did occur."

[6] With respect to the Employer-Respondent's exceptions to the Hearing Officer's recommendation that Objection 2 be overruled, we note there is no direct proof that the content of Petitioner representative Belyeu's conversations with employees constituted actual electioneering, or evidence that the conversations were specifically directed to employees then in the voting line.

Board to reexamine the decision with respect to the representation proceeding, nor has it raised any other issue properly litigable in this unfair labor practice proceeding. Accordingly, we grant the Motion for Summary Judgment in Case 15-CA-7839.

On the basis of the entire record, the Board makes the following:

FINDINGS OF FACT

I. THE BUSINESS OF RESPONDENT

Respondent, a Georgia corporation with facilities in Anguilla, Mississippi, is enaged in the assembly and sale of wire harnesses for use in automobiles and telephone equipment. During the past 12-month period, which is representative of all times material herein, Respondent in the course and conduct of its business operations described above had gross revenues in excess of $500,000. During the same period, Respondent purchased and received goods and products valued in excess of $50,000 directly from points located outside the State of Mississippi, and sold and shipped products valued in excess of $50,000 to points located outside the State of Mississippi.

We find, on the basis of the foregoing, that Respondent is, and has been at all times material herein, an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act, and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE UNFAIR LABOR PRACTICES

A. *The Representation Proceeding*

1. The unit

The following employees of Respondent constitute a unit appropriate for collective-bargaining purposes within the meaning of Section 9(b) of the Act:

> All production and maintenance employees, group leaders, inspectors, production control clerks, and the truck driver employed by Respondent at its Anguilla, Mississippi, facility; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

2. The certification

On April 23, 1980, a majority of the employees of Respondent in said unit, in a secret-ballot election conducted under the supervision of the Regional Director for Region 15, designated the Union as their representative for the purpose of collective bargaining with Respondent.

The Union was certified as the collective-bargaining representative of the employees in said unit on July 14, 1980, and the Union continues to be such exclusive representative within the meaning of Section 9(a) of the Act.

B. *The Request To Bargain and Respondent's Refusal*

Commencing on or about July 17, 1980, and at all times thereafter, the Union has requested Respondent to bargain collectively with it as the exclusive collective-bargaining representative of all the employees in the above-described unit. Commencing on or about July 18, 1980, and continuing at all times thereafter to date, Respondent has refused, and continues to refuse, to recognize and bargain with the Union as the exclusive representative for collective bargaining of all employees in said unit.

Accordingly, we find that Respondent has, since July 18, 1980, and at all times thereafter, refused to bargain collectively with the Union as the exclusive representative of the employees in the appropriate unit, and that, by such refusal, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES UPON COMMERCE

The activities of Respondent, set forth in section III, above, occurring in connection with its operations described in section I, above, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

V. THE REMEDY

Having found that Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) and (1) of the Act, we shall order that it cease and desist therefrom, and, upon request, bargain collectively with the Union as the exclusive representative of all employees in the appropriate unit and, if an understanding is

reached, embody such understanding in a signed agreement.

In order to ensure that the employees in the appropriate unit will be accorded the services of their selected bargaining agent for the period provided by law, we shall construe the initial period of certification as beginning on the date Respondent commences to bargain in good faith with the Union as the recognized bargaining representative in the appropriate unit. See *Mar-Jac Poultry Company, Inc.*, 136 NLRB 785 (1962); *Commerce Company d/b/a Lamar Hotel*, 140 NLRB 226, 229 (1962), enfd. 328 F.2d 600 (5th Cir. 1964), cert. denied 379 U.S. 817; *Burnett Construction Company*, 149 NLRB 1419, 1421 (1964), enfd. 350 F.2d 57 (10th Cir. 1965).

The Board, upon the basis of the foregoing facts and the entire record, makes the following:

CONCLUSIONS OF LAW

1. Assembly Manufacturing Corporation, is an employer engaged in commerce within the meaning of Section 2(6) and (7) of the Act.

2. International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, is a labor organization within the meaning of Section 2(5) of the Act.

3. All production and maintenance employees, group leaders, inspectors, production control clerks, and the truck driver employed by Respondent at its Anguilla, Mississippi, facility; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act.

4. Since July 14, 1980, the above-named labor organization has been and now is the certified and exclusive representative of all employees in the aforesaid appropriate unit for the purpose of collective bargaining within the meaning of Section 9(a) of the Act.

5. By refusing on or about July 18, 1980, and at all times thereafter, to bargain collectively with the above-named labor organization as the exclusive bargaining representative of all the employees of Respondent in the appropriate unit, Respondent has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(5) of the Act.

6. By the aforesaid refusal to bargain, Respondent has interfered with, restrained, and coerced, and is interfering with, restraining, and coercing, employees in the exercise of the rights guaranteed them in Section 7 of the Act, and thereby has engaged in and is engaging in unfair labor practices within the meaning of Section 8(a)(1) of the Act.

7. The aforesaid unfair labor practices are unfair labor practices affecting commerce within the meaning of Section 2(6) and (7) of the Act.

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Assembly Manufacturing Corporation, Anguilla, Mississippi, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Refusing to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive bargaining representative of its employees in the following appropriate unit:

> All production and maintenance employees, group leaders, inspectors, production control clerks, and the truck driver employed by Respondent at its Anguilla, Mississippi, facility; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them in Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Upon request, bargain with the above-named labor organization as the exclusive representative of all employees in the aforesaid appropriate unit with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement.

(b) Post at its Anguilla, Mississippi, location copies of the attached notice marked "Appendix."[7] Copies of said notice, on forms provided by the Regional Director for Region 15, after being duly signed by Respondent's representative, shall be posted by Respondent immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Re-

[7] In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor RelationsBoard" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

spondent to ensure that said notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director for Region 15, in writing, within 20 days from the date of this Order, what steps have been taken to comply herewith.

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT refuse to bargain collectively concerning rates of pay, wages, hours, and other terms and conditions of employment with International Union of Electrical, Radio and Machine Workers, AFL-CIO-CLC, as the exclusive representative of the employees in t' bargaining unit described below.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce our employees in the exercise of the rights guaranteed them by Section 7 of the Act.

WE WILL, upon request, bargain with the above-named Union, as the exclusive representative of all employees in the bargaining unit described below, with respect to rates of pay, wages, hours, and other terms and conditions of employment and, if an understanding is reached, embody such understanding in a signed agreement. The bargaining unit is:

All production and maintenance employees, group leaders, inspectors, production control clerks, and the truck driver employed by the Employer at its Anguilla, Mississippi, facility; excluding all office clerical employees, professional employees, guards and supervisors as defined in the Act.

ASSEMBLY MANUFACTURING CORPORATION